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NOTE AND COMMENT

MARITIME LIENS—PERSONALITY OF SHIP.—In *Coal Company* v. *Fisheries Company* (Advanced Sheets, Nov. 15, 1920), the Supreme Court denies a lien for supplies of coal furnished the owner of a fleet of vessels for use thereon and, incidentally, brings into stronger relief the admiralty doctrine of the personality of the ship as distinguished from that of the owner. At the time the arrangement was made, the shipowner was without money or credit and could not enter upon its operations without a supply of coal for its ships and factories. The Coal Company agreed to supply its requirements on the understanding that, while some of the fuel would be used on shore, the greater part would be consumed by the vessels and that it would have a maritime lien therefor. All deliveries were made at the shipowner's factories and the ships were fueled from its bins in quantities of which accurate accounts were kept. Towards the close of the season of navigation, the vessels were sold under a foreclosure of mortgage and the Coal Company asserted its lien by proceedings *in rem* against them. In affirming the decree of the Court of Appeals dismissing the libels, the Supreme Court points out that the maritime lien provided by the Act of June 23, 1910, rests upon a furnishing of supplies to the vessel and not to the owner for such appropriation to the vessel as he

may subsequently make. The implication is that the relations requisite for such liens as the statute mentions must be between the creditor and the ship, not between the creditor and the shipowner, since the ship is "an entity capable of entering into relations with others, of acting independently, and of becoming responsible for her acts." Here the material man had furnished coal to the shipowner but it was the shipowner which had furnished the ship, so that no maritime lien was created.

Detroit Mich. G. L. CANFIELD.

THE RIGHT OF A JURY IN A CRIMINAL CASE TO RENDER A VERDICT AGAINST THE LAW AND THE EVIDENCE.—One George D. Horning was convicted of the criminal offense of doing business as a pawnbroker in the District of Columbia without a license. The jury, which rendered the verdict of guilty, were told by the court, in the course of the charge, that there really was no issue of fact for them to decide; that the evidence showed a course of dealing constituting a breach of the law, and that they were not warranted in capriciously saying that the witnesses for the government and for the defendant were not telling the truth; that it was their duty to accept the exposition of the law given them by the court; and that while, in a criminal case, the court could not peremptorily instruct them to find the defendant guilty, if the law permitted it he would do so in this case. The judge concluded his charge as follows:

"In conclusion I will say that a failure to bring in a verdict in this case can arise only from a wilful and flagrant disregard of the evidence and the law as I have given it to you and a violation of your obligation as jurors. Of course, gentlemen, I cannot tell you in so many words to find defendant guilty, but what I say amounts to that."

On a writ of certiorari to the Supreme Court of the United States, it was held by Justices Holmes and four concurring judges that there was no error in these instructions. Justice Brandeis and three other judges dissented. This was the case of *Horning* v. *District of Columbia,* 41 Sup. Ct. Rep. 53, decided November 22, 1920.

Justice Holmes said that the judge could not direct a verdict of guilty, for "the Jury has the *power* to bring in a verdict in the teeth of both law and facts", but that he had not really done so in this case, for "the jury were allowed the *technical right,* if it can be so called, to decide against the law and the facts."

Justice Brandeis said that in his opinion the charge of the court amounted to a "moral command", and was as much the direction of a verdict as though made "in so many words."

What the trial judge did in this case was, in effect, to inform the jury that it was their *duty* as jurors, under the oath which they had taken, to find the defendant guilty on the undisputed facts and on the law which he had laid down, but that he could not take any steps to compel them to do their duty further than to urge them to do it. Here was a duty, then, which could not be enforced, and a breach of which could not be punished. Did it fol-